

## § 886.319

administration of the Contract and monitoring of project operations.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2505-0052)

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39709, Sep. 27, 1989; 56 FR 7542, Feb. 22, 1991; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16724, Mar. 29, 2000]

### § 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

[60 FR 11860, Mar. 2, 1995]

### § 886.320 Default under the contract.

The contract shall contain a provision to the effect that if HUD determines that the owner is in default under the contract, HUD shall notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including recovery of overpayments, where appropriate, and that if the owner fails to cure the default within a reasonable time as determined by HUD, HUD has the right to terminate the contract or to take other corrective action, including rescission of the sale. When contract termination is under consideration by HUD, HUD shall give eligible families an opportunity to submit written and other comments. Where the project is sold under the arrangement that involves a regulatory agreement between HUD and the owner, a default under the regulatory agreement shall be treated as default under the contract.

### § 886.321 Marketing.

(a) *Marketing in accordance with HUD-Approved Plan.* Marketing of units and selection of families by the owner shall be in accordance with the owner's HUD-approved Affirmative Fair Housing Marketing Plan, HUD-approved tenant selection factors and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be

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managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, §§ 5.653 through 5.661.)

(2) For every family that applies for admission, the owner and the applicant must complete and sign the form of application prescribed by HUD. When the owner decides no longer to accept applications, the owner must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect must also be published. The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

(3) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the owner does not have a suitable unit to offer, the owner shall place such family on the waiting list and so advise the family indicating approximately when a unit may be available.

(4) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable in accordance with the HUD approved tenant selection factors and if the owner has a suitable unit, the owner and the family shall enter into a lease. The lease shall be on a form approved by HUD and shall otherwise be in conformity with the provisions of this subpart.

(5) Records on applicant families and approved families shall be maintained by the owner so as to provide HUD with racial, ethnic, and gender data and

shall be retained by the owner for 3 years.

(6) If the owner determines that an applicant is not eligible, or, if eligible, not selected, the owner must notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this paragraph (b)(6) do not preclude an applicant from exercising his or her other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap. The owner must retain for three years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition. The informal review provisions for the denial of a tenant selection preference under § 886.337 are contained in paragraph (k) of that section.

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

(c) *Initial occupancy.* (1) Where rehabilitation is involved, sixty days prior to the completion of the rehabilitation, or when the rehabilitation is begun, whichever is later, the Owner shall determine whether the tenant population of the project generally reflects the racial/ethnic makeup of the housing market area. Based on this determination, the Owner shall then conduct appropriate marketing activities in accordance with a HUD-approved Affirmative Fair Housing Marketing Plan. Such activities may include special outreach to those groups identified as not ordinarily expected to apply for these units without special outreach; notification to PHA's in the housing market area of any anticipated vacancies; and formu-

lation of waiting lists based on the Owner's HUD-approved tenant selection factors.

(2) Where a PHA is notified, the PHA shall notify an appropriate size family (families) on its waiting list of the availability of the unit and refer the family (families) to the owner. (Since the Owner is responsible for tenant selection, the owner is not required to lease to a PHA selected family, but the owner must comply with § 886.321(b)(6).)

[44 FR 70365, Dec. 6, 1979, as amended at 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

#### § 886.322 [Reserved]

#### § 886.323 Maintenance, operation, and inspections.

(a) *Maintain decent, safe, and sanitary housing.* The owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they are in decent, safe, and sanitary condition.

(c) *Owner and family inspection.* Prior to occupancy of any vacant unit by a family, the owner and the family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Annual inspections.* HUD will inspect the project (or cause it to be inspected) at least annually and at such other times as HUD may determine to be necessary to assure that the owner is meeting his or her obligation to maintain the units and the related facilities in decent, safe, and sanitary condition and to provide the agreed-upon utilities and other services. HUD will take into account complaints by occupants and any other information